



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0402; FRL9705-8]

Approval and Promulgation of Implementation Plans; South Carolina 110(a)(1) and (2)
Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air
Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan (SIP) submissions, submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. South Carolina certified that the South Carolina SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM₂ NAAQS are implemented, enforced, and maintained in South Carolina (hereafter referred to as “infrastructure submission”). South Carolina’s infrastructure submissions, provided to EPA on March 14, 2008, and September 18, 2009, certification submissions (as clarified in a letter on November 9, 2009),

and the State's April 3, 2012, SIP revision address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM₂ NAAQS.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0238. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m. excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual PM_{2.5} NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 6, 2012, EPA proposed in two separate actions to approve South Carolina's March 14, 2008, September 18, 2009, and April 3, 2012, infrastructure submissions for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. *See* 77 FR 33372 and 77 FR 33380. The March 14, 2008 and September 18, 2009, infrastructure

submission for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressed elements 110(a)(2)(A)-(H), (J)-(M), except for sections 110(a)(2)(C) - the nonattainment area requirements; 110(a)(2)(D)(i) - the interstate transport requirements; 110(a)(2)(E)(ii) - board requirements;¹ and 110(a)(2)(G) - emergency powers. See EPA's June 6, 2012, proposed rulemakings at 77 FR 33372 for more detail. The April 3, 2012, SIP revision addressed elements 110(a)(2)(E)(ii) and 110(a)(2)(G). See EPA's June 6, 2012, proposed rulemakings at 77 FR 33380 for more detail. A summary of the background for today's final action is provided below.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP

¹ EPA is clarifying through today's final rulemaking that South Carolina's April 13, 2012, SIP revision proposed that existing State statute meet the requirements of 128.

requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below² and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.³
- 110(a)(2)(D): Interstate transport.⁴
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.

² Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how South Carolina's SIP addresses 110(a)(2)(C).

³ This rulemaking only addresses requirements for this element as they relate to attainment areas.

⁴ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 PM_{2.5} NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 57209 (October 9, 2007). In so doing, South Carolina's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 PM_{2.5} NAAQS. Concerning the 2006 PM_{2.5} NAAQS, EPA has finalized a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule"). EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁵
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve South Carolina’s infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. South Carolina certified that the South Carolina SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in South Carolina.

⁵ This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s final rulemaking.

EPA received no adverse comments on its June 6, 2012, proposed approval of South Carolina's March 14, 2008, September 18, 2009, and April 3, 2012, infrastructure submissions. Additionally, on June 23, 2012, EPA published a final rulemaking action approving revisions to South Carolina's New Source Review (NSR) requirements relating to the PM_{2.5} standard. *See* 76 FR 36875. EPA is not taking action today on South Carolina's NSR program, as these requirements are already approved in South Carolina's SIP.

South Carolina's infrastructure submissions, provided to EPA on March 14, 2008, and September 18, 2009, as certification submissions (as clarified in a letter on November 9, 2009), and the State's April 3, 2012, SIP revision addressed all the required infrastructure elements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA has determined that South Carolina's March 14, 2008, September 18, 2009, and April 3, 2012, submissions are consistent with section 110 of the CAA.

III. Final Action

As already described, SC DHEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in the State. EPA is taking final action to approve South Carolina's March 14, 2008, September 18, 2009, and April 3, 2012, submissions for 1997 annual and 2006 24-hour PM_{2.5} NAAQS because these submissions are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that South Carolina's already approved SIP meets certain CAA requirements.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA has determined that this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no “substantial direct effects” on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

Therefore, 40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

2. Amend § 52.2120 in paragraph (e) by adding three new entries for “110(a)(1) and (2)

Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards,” “110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards,” and “110(a)(1) and (2) Infrastructure Requirements for 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards Elements 110(a)(1) and (2) (E)(ii) and (G)” at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * *

(e) * * *

EPA-Approved South Carolina non-regulatory provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air	4/14/2008	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

Quality Standards			
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	9/18/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
110(a)(1) and (2) Infrastructure Requirements for 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards Elements 110(a)(1) and (2) (E)(ii) and (G)	4/3/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

[FR Doc. 2012-18519 Filed 07/31/2012 at 8:45 am; Publication Date: 08/01/2012]